

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION**

RAYMOND HASTO,)	Case No. _____
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	
DISCOVER BANK, DISCOVER)	
FINANCIAL SERVICES, INC., and)	
DFS SERVICES, LLC)	Jury Trial Demanded
)	
Defendant.)	
_____)	

NATURE OF ACTION

1. Plaintiff Raymond Hasto (“Plaintiff”) brings this action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction under 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331.

3. Venue is proper before this Court under 28 U.S.C. § 1391(b), as the acts and transactions giving rise to Plaintiff’s action occurred in this district, Plaintiff resides in this district, and Defendants transact business in this district.

PARTIES

4. Plaintiff is a natural person who at all relevant times resided in the State of New York, County of Monroe, and City of Rochester.

5. Defendant Discover Bank is a Delaware corporation with its principal place of business in Greenwood, Delaware.

6. Discover Bank may be served through its registered agent, C T CORPORATION SYSTEM, 111 Eighth Avenue, New York, NY 10011.

7. Discover Bank is an FDIC member who issues credit cards to consumers and businesses, and who itself or by and through its subsidiaries or affiliates, initiates outbound telephone calls to its customers.

8. Defendant Discover Financial Services, Inc. (“DFS”) is a bank holding company and parent company of Discover Bank who, itself or by and through its affiliates or subsidiaries, initiates outbound telephone calls to Discover Bank’s customers.

9. DFS may be served through its registered agent, C T CORPORATION SYSTEM, 111 Eighth Avenue, New York, NY 10011.

10. Defendant DFS Services, LLC (“DFS Services”) is a subsidiary of Discovery Financial Services, Inc., who itself or by and through its affiliates or subsidiaries, initiates outbound telephone calls to Discover Bank’s customers.

11. DFS Services may be served through its registered agent, C T CORPORATION SYSTEM, 111 Eighth Avenue, New York, NY 10011.

12. Discover Bank, DFS, and/or DFS Services (collectively referred to as “Discover”) constitute a single economic enterprise.

FACTUAL ALLEGATIONS

13. Plaintiff, via his counsel, sent written correspondence dated October 25, 2012 to Discover regarding account number ending in 9895, that stated, in relevant part:

Please be advised that this office represents the above-named individual regarding the aforementioned account.

Having been formally notified of our representation, we respectfully demand you not contact our client for any reason. Instead, please direct all future contact and

correspondence to this office and in fact consider this letter express and unequivocal revocation of any permission our client may have provided you to call them.

See October 25, 2012 Correspondence, attached as Exhibit "A."

14. Discover received Plaintiff's correspondence on November 1, 2012 at 9:06 A.M. See USPS Delivery Confirmation, attached as Exhibit "B."

15. Despite receiving Plaintiff's revocation of any consent he may have given to place telephone calls to him, Discover placed multiple calls to Plaintiff's cellular telephone, including, but not limited to, the following dates and times:

- 1) January 4, 2013 at 1:56 P.M.;
- 2) January 4, 2013 at 6:50 P.M.;
- 3) January 5, 2013 at 10:25 A.M.;
- 4) January 5, 2013 at 11:27 A.M.;
- 5) January 5, 2013 at 12:03 P.M.;
- 6) January 5, 2013 at 1:23 P.M.;
- 7) January 9, 2013 at 6:33 P.M.;
- 8) January 10, 2013 at 11:37 A.M.;
- 9) January 11, 2013 at 9:15 A.M.;
- 10) January 11, 2013 at 10:57 A.M.;
- 11) January 11, 2013 at 11:27 A.M.;
- 12) January 11, 2013 at 3:47 P.M.;
- 13) January 11, 2013 at 3:21 P.M.;
- 14) January 12, 2013 at 11:02 A.M.;
- 15) January 12, 2012 at 12:46 P.M.;
- 16) January 14, 2013 at 9:15 A.M.;
- 17) January 14, 2013 at 6:22 P.M.;
- 18) January 15, 2013 at 9:23 A.M.;
- 19) January 15, 2013 at 11:44 A.M.;
- 20) January 16, 2013 at 11:36 A.M.;
- 21) January 16, 2013 at 6:38 P.M.;
- 22) January 17, 2013 at 9:11 A.M.;
- 23) January 17, 2013 at 11:30 A.M.;
- 24) January 17, 2013 at 3:51 P.M.;
- 25) January 17, 2013 at 6:18 P.M.;
- 26) January 18, 2013 at 9:11 A.M.;
- 27) January 18, 2013 at 2:05 P.M.;
- 28) January 18, 2013 at 7:36 P.M.;
- 29) January 19, 2013 at 10:28 A.M.;
- 30) January 19, 2013 at 12:23 P.M.;

31) January 21, 2013 at 12:17 P.M.;
32) January 21, 2013 at 5:14 P.M.;
33) January 22, 2013 at 9:27 A.M.;
34) January 22, 2013 at 11:43 A.M.;
35) January 22, 2013 at 11:44 A.M.;
36) January 29, 2013 at 9:16 A.M.;
37) January 29, 2013 at 11:29 A.M.;
38) January 29, 2013 at 4:57 P.M.;
39) January 30, 2013 at 9:26 A.M.;
40) January 30, 2013 at 11:51 A.M.;
41) January 30, 2013 at 4:05 P.M.;
42) January 31, 2013 at 8:00 A.M.;
43) February 1, 2013 at 8:43 A.M.;
44) February 1, 2013 at 11:45 A.M.;
45) February 2, 2013 at 8:56 A.M.;
46) February 2, 2013 at 11:09 A.M.;
47) February 2, 2013 at 12:44 P.M.;
48) February 2, 2013 at 4:04 P.M.;
49) February 4, 2013 at 9:29 A.M.;
50) February 4, 2013 at 12:15 P.M.;
51) February 4, 2013 at 7:30 P.M.;
52) February 5, 2013 at 9:18 A.M.;
53) February 5, 2013 at 11:37 A.M.;
54) February 5, 2013 at 6:31 P.M.;
55) February 5, 2013 at 6:32 P.M.;
56) February 6, 2013 at 11:24 A.M.;
57) February 6, 2013 at 3:55 P.M.;
58) February 6, 2013 at 6:19 P.M.;
59) February 7, 2013 at 8:51 A.M.;
60) February 7, 2013 at 11:27 A.M.;
61) February 7, 2013 at 3:56 P.M.;
62) February 8, 2013 at 8:45 A.M.;
63) February 8, 2013 at 12:04 P.M.;
64) February 8, 2013 at 8:18 P.M.;
65) February 9, 2013 at 8:48 A.M.;
66) February 9, 2013 at 10:11 A.M.;
67) February 9, 2013 at 12:39 P.M.;
68) February 11, 2013 at 8:33 A.M.;
69) February 11, 2013 at 12:06 P.M.;
70) February 11, 2013 at 4:04 P.M.;
71) February 13, 2013 at 9:11 A.M.;
72) February 13, 2013 at 11:43 A.M.;
73) February 13, 2013 at 6:23 P.M.;
74) February 14, 2013 at 8:51 A.M.;
75) February 14, 2013 at 9:12 A.M.;
76) February 14, 2013 at 11:20 A.M.;

- 77) February 14, 2013 at 6:00 P.M.;
- 78) February 15, 2013 at 9:18 A.M.;
- 79) February 15, 2013 at 11:54 A.M.;
- 80) February 15, 2013 at 6:27 P.M.;
- 81) February 16, 2013 at 8:38 A.M.;
- 82) February 16, 2013 at 10:22 A.M.;
- 83) February 16, 2013 at 11:42 A.M.;
- 84) February 18, 2013 at 8:43 A.M.;
- 85) February 18, 2013 at 11:28 A.M.;
- 86) February 18, 2013 at 6:27 P.M.;
- 87) February 19, 2013 at 9:12 A.M.;
- 88) February 19, 2013 at 6:07 P.M.;
- 89) February 20, 2013 at 8:26 A.M.;
- 90) February 20, 2013 at 9:18 A.M.;
- 91) February 20, 2013 at 10:55 A.M.;
- 92) February 20, 2013 at 11:50 A.M.;
- 93) February 20, 2013 at 12:55 P.M.;
- 94) February 20, 2013 at 3:39 P.M.;
- 95) February 22, 2013 at 11:30 A.M.;
- 96) February 22, 2013 at 6:25 P.M.;
- 97) February 23, 2013 at 9:21 A.M.;
- 98) February 23, 2013 at 10:36 A.M.;
- 99) February 23, 2013 at 11:56 A.M.;
- 100) February 23, 2013 at 2:39 P.M.;
- 101) March 18, 2013 at 9:35 A.M.;
- 102) March 20, 2013 at 1:02 P.M.;
- 103) March 22, 2013 at 9:11 A.M.;
- 104) March 25, 2013 at 10:04 A.M.;
- 105) March 25, 2013 at 2:33 P.M.;
- 106) March 26, 2013 at 8:31 A.M.;
- 107) March 26, 2013 at 10:26 A.M.;
- 108) March 26, 2013 at 12:02 P.M.;
- 109) April 2, 2013 at 10:26 A.M.;
- 110) April 3, 2013 at 7:30 P.M.;
- 111) April 4, 2013 at 8:57 A.M.;
- 112) April 4, 2013 at 4:41 P.M.;
- 113) April 4, 2013 at 5:59 P.M.;
- 114) April 5, 2013 at 8:46 A.M.;
- 115) April 5, 2013 at 3:38 P.M.;
- 116) April 5, 2013 at 7:24 P.M.;
- 117) April 6, 2013 at 9:40 A.M.;
- 118) April 6, 2013 at 12:38 P.M.;
- 119) April 6, 2013 at 1:51 P.M.;
- 120) April 8, 2013 at 8:50 A.M.;
- 121) April 8, 2013 at 1:19 P.M.;
- 122) April 9, 2013 at 10:46 A.M.;

123) April 9, 2013 at 2:56 P.M.;
124) April 9, 2013 at 4:08 P.M.;
125) April 12, 2013 at 4:54 P.M.;
126) April 12, 2013 at 8:15 P.M.;
127) April 13, 2013 at 12:26 P.M.;
128) April 13, 2013 at 2:17 P.M.;
129) April 15, 2013 at 8:01 P.M.;
130) April 18, 2013 at 7:31 P.M.;
131) April 18, 2013 at 8:48 P.M.;
132) April 19, 2013 at 4:52 P.M.;
133) April 19, 2013 at 5:39 P.M.;
134) April 22, 2013 at 10:50 A.M.;
135) April 22, 2013 at 6:57 P.M.;
136) April 23, 2013 at 9:27 A.M.;
137) April 23, 2013 at 6:23 P.M.;
138) April 24, 2013 at 10:46 A.M.;
139) April 24, 2013 at 8:34 P.M.;
140) April 25, 2013 at 8:16 A.M.;
141) April 25, 2013 at 4:40 P.M.;
142) April 26, 2013 at 9:36 A.M.;
143) April 26, 2013 at 6:37 P.M.;
144) April 26, 2013 at 8:45 P.M.;
145) April 27, 2013 at 9:30 A.M.;
146) April 27, 2013 at 11:35A.M.;
147) April 27, 2013 at 1:10 P.M.;
148) April 28, 2013 at 10:24 A.M.;
149) April 28, 2013 at 12:12 P.M.;
150) April 28, 2013 at 1:46 P.M.;
151) April 29, 2013 at 9:39 A.M.;
152) April 29, 2013 at 4:00 P.M.;
153) April 29, 2013 at 8:40 P.M.;
154) April 30, 2013 at 8:40 A.M.;
155) April 30, 2013 at 3:50 P.M.;
156) May 1, 2013 at 1:27 P.M.;
157) May 1, 2013 at 5:14 P.M.;
158) May 2, 2013 at 8:32 P.M.;
159) May 4, 2013 at 12:06 P.M.;
160) May 4, 2013 at 1:35 P.M.;
161) May 6, 2013 at 7:36 P.M.;
162) May 9, 2013 at 8:37 P.M.;
163) May 10, 2013 at 6:29 P.M.;
164) May 10, 2013 at 8:22 P.M.;
165) May 11, 2013 at 12:08 P.M.;
166) May 11, 2013 at 2:20 P.M.;
167) May 13, 2013 at 11:09 A.M.;
168) May 13, 2013 at 8:15 P.M.;

169) May 14, 2013 at 10:22 A.M.;
170) May 14, 2013 at 4:00 P.M.;
171) May 14, 2013 at 7:43 P.M.;
172) May 15, 2013 at 8:30 P.M.;
173) May 16, 2013 at 7:06 P.M.;
174) May 16, 2013 at 8:46 P.M.;
175) May 20, 2013 at 4:01 P.M.;
176) May 20, 2013 at 6:26 P.M.;
177) May 20, 2013 at 8:47 P.M.;
178) May 21, 2013 at 2:00 P.M.;
179) May 21, 2013 at 6:39 P.M.;
180) May 21, 2013 at 8:31 P.M.;
181) May 22, 2013 at 2:44 P.M.;
182) May 22, 2013 at 4:36 P.M.;
183) May 22, 2013 at 7:06 P.M.;
184) May 23, 2013 at 3:12 P.M.;
185) May 23, 2013 at 8:04 P.M.;
186) May 23, 2013 at 7:06 P.M.;
187) May 23, 2013 at 8:04 P.M.;
188) May 24, 2013 at 8:11 A.M.;
189) May 25, 2013 at 9:47 A.M.;
190) May 25, 2013 at 12:00 P.M.;
191) May 25, 2013 at 2:26 P.M.;
192) May 26, 2013 at 10:13 A.M.;
193) May 26, 2013 at 12:16 P.M.;
194) May 26, 2013 at 1:28 P.M.;
195) May 27, 2013 at 11:57 A.M.;
196) May 27, 2013 at 6:49 P.M.;
197) May 27, 2013 at 8:19 P.M.;
198) May 28, 2013 at 12:11 P.M.;
199) May 28, 2013 at 7:57 P.M.;
200) May 29, 2013 at 8:15 P.M.;
201) May 30, 2013 at 8:54 P.M.;
202) May 31, 2013 at 8:33 P.M.;
203) June 1, 2013 at 9:16 A.M.;
204) June 1, 2013 at 10:41 A.M.;
205) June 1, 2013 at 11:56 A.M.;
206) June 3, 2013 at 9:13 A.M.;
207) June 3, 2013 at 10:17 A.M.;
208) June 3, 2013 at 2:45 P.M.;
209) June 4, 2013 at 9:07 A.M.;
210) June 4, 2013 at 2:59 P.M.;
211) June 5, 2013 at 9:10 A.M.;
212) June 5, 2013 at 2:42 P.M.;
213) June 6, 2013 at 9:27 A.M.;
214) June 6, 2013 at 3:09 P.M.;

215) June 6, 2013 at 4:53 P.M.;
216) June 7, 2013 at 9:33 A.M.;
217) June 7, 2013 at 2:05 P.M.;
218) June 8, 2013 at 11:12 A.M.,
219) June 8, 2013 at 12:52 P.M.,
220) June 8, 2013 at 2:33 P.M.,
221) June 9, 2013 at 11:12 A.M.,
222) June 9, 2013 at 9:57A.M.,
223) June 9, 2013 at 2:33 P.M.,
224) June 9, 2013 at 5:04 P.M.,
225) June 10, 2013 at 1:17 P.M.,
226) June 10, 2013 at 2:36 P.M.,
227) June 11, 2013 at 9:54 A.M.,
228) June 11, 2013 at 4:08 P.M.,
229) June 11, 2013 at 5:22 P.M.,
230) June 12, 2013 at 8:05 A.M.,
231) June 12, 2013 at 4:47 P.M.,
232) June 12, 2013 at 6:58 P.M.,
233) June 13, 2013 at 1:06 P.M.,
234) June 14, 2013 at 9:10 A.M.,
235) June 14, 2013 at 10:19 A.M.,
236) June 14, 2013 at 11:40 A.M.,
237) June 27, 2013 at 9:37 A.M.,
238) June 27, 2013 at 11:17 A.M.,
239) June 27, 2013 at 1:18 P.M.,
240) June 28, 2013 at 9:34 A.M.,
241) June 28, 2013 at 11:18 A.M.,
242) June 28, 2013 at 12:29 P.M.,
243) June 28, 2013 at 10:02 A.M.,
244) July 7, 2013 at 8:39 A.M.,
245) July 7, 2013 at 12:22 P.M.,
246) July 7, 2013 at 3:57 P.M.,
247) July 8, 2013 at 9:11 A.M.,
248) July 8, 2013 at 1:44 P.M.,
249) July 8, 2013 at 3:13 P.M.,
250) July 8, 2013 at 4:51 P.M.,
251) July 9, 2013 at 8:22 A.M.,
252) July 9, 2013 at 9:36 A.M.,
253) July 9, 2013 at 10:40 A.M.,
254) July 11, 2013 at 10:53 A.M.,
255) July 11, 2013 at 4:56 P.M.,
256) July 11, 2013 at 8:53 P.M.,
257) July 12, 2013 at 10:09 A.M.,
258) July 12, 2013 at 11:47 A.M.,
259) July 14, 2013 at 10:13 A.M.,
260) July 14, 2013 at 1:29 P.M.,

261) July 15, 2013 at 8:44 A.M.,
262) July 15, 2013 at 11:00 A.M.,
263) July 15, 2013 at 2:07 P.M.,
264) July 16, 2013 at 9:01 A.M.,
265) July 16, 2013 at 10:34 A.M.,
266) July 16, 2013 at 11:53 A.M.,
267) July 17, 2013 at 8:42 A.M.,
268) July 17, 2013 at 10:36 A.M.,
269) July 17, 2013 at 12:23 P.M.,
270) July 17, 2013 at 12:55 P.M.,
271) July 17, 2013 at 4:16 P.M.,
272) July 17, 2013 at 7:22 P.M.,
273) July 21, 2013 at 1:36 P.M.,
274) July 21, 2013 at 5:29 P.M.,
275) July 21, 2013 at 6:05 P.M.,
276) July 21, 2013 at 7:34 P.M.,
277) July 22, 2013 at 4:07 P.M.,
278) July 22, 2013 at 6:06 P.M.,
279) July 22, 2013 at 7:35 P.M.,
280) July 24, 2013 at 9:38 A.M.,
281) July 24, 2013 at 4:08 P.M.,
282) July 25, 2013 at 8:50 A.M.,
283) July 25, 2013 at 10:49 A.M.,
284) July 26, 2013 at 2:44 P.M.,
285) July 27, 2013 at 9:21 A.M.,
286) July 27, 2013 at 10:28 A.M.,
287) July 28, 2013 at 9:25 A.M.,
288) July 29, 2013 at 9:34 A.M.,
289) July 30, 2013 at 10:21 A.M.,
290) July 31, 2013 at 9:35 A.M.,
291) August 1, 2013 at 8:23 A.M., and
292) August 1, 2013 at 9:58 A.M.

16. During the above-referenced telephone calls on February 14, 2013 at 11:20 A.M.; February 14, 2013 at 6:00 P.M.; February 15, 2013 at 9:18 A.M.; February 16, 2013 at 11:42 A.M.; February 20, 2013 at 11:50 A.M.; February 22, 2013 at 11:30 A.M.; and February 23, 2013 at 9:21 A.M., Plaintiff answered the calls and listened to beeps and a pre-recorded voicemail message.

17. During the above-referenced calls placed between May 28, 2013 and July 12, 2013, Plaintiff received, and has retained, voice messages containing period beeps

and either: (1) silence; (2) an employee leaving a message about Discover Financial Services' "special" programs; or (3) an employee saying, "Hello?" or "Raymond?"

18. Upon information and good-faith belief, the telephone calls identified above were placed to Plaintiff's cellular telephone number using an automatic telephone dialing system, predictive dialer and/or an artificial or pre-recorded voice.

19. Discover did not place any telephone calls to Plaintiff for emergency purposes.

20. Discover did not have Plaintiff's prior express consent to make any telephone calls to Plaintiff's cellular telephone number.

21. To the extent Discover had Plaintiff's prior express consent to make any telephone calls to Plaintiff's cellular telephone number, that consent was revoked in the October 25, 2012 letter from Plaintiff's counsel.

22. Upon information and good-faith belief, Discover placed the telephone calls to Plaintiff identified above voluntarily.

23. Upon information and good-faith belief, Discover placed the telephone calls to Plaintiff identified above under its own free will.

24. Upon information and good-faith belief, Discover had knowledge that it was using an automatic telephone dialing system, predictive dialer and/or an artificial or pre-recorded voice to make and/or place each of the telephone calls identified above.

25. Upon information and good-faith belief, Discover intended to use an automatic telephone dialing system, predictive dialer and/or an artificial or pre-recorded voice to make and/or place each of the telephone calls identified above.

26. Upon information and good-faith belief, Discover maintains business

records that show all calls Discover placed to Plaintiff's cellular telephone number.

COUNT I
VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)

27. Plaintiff repeats and re-alleges each and every factual allegation above.

28. Discover violated 47 U.S.C. § 227(b)(1)(A)(iii) by willfully and knowingly placing calls to Plaintiff's cellular telephone using an automatic telephone dialing system, predictive dialer and/or an artificial or pre-recorded voice.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Discover violated 47 U.S.C. § 227(b)(1)(A)(iii);
- b) Enjoining Discover from placing any further telephone calls to Plaintiff in violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(A);
- c) Awarding Plaintiff actual damages, or statutory damages in the amount of \$500.00 per violation, whichever is greater, pursuant to 47 U.S.C. § 227(b)(3)(B);
- d) Awarding Plaintiff treble damages, pursuant to 47 U.S.C. § 227(b)(3), in the amount of \$1,500.00 per violation, or three times Plaintiff's actual damages, whichever is greater;
- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem just and proper.

TRIAL BY JURY

29. Plaintiff is entitled to and hereby demands a trial by jury.

This 16th day of September, 2013.

Respectfully submitted,

/s/ Aaron Radbil

Aaron Radbil

Weisberg & Meyers, LLC

5025 N. Central Ave. #602

Phoenix, AZ 85012

Attorney for Plaintiff